Richter in view of Saunders (5,780,807). Claims 27, 28, and 36-39 were rejected under 35 USC 103(a) as being unpatentable over Yan in view of Gray et al. Each of these rejections will be addressed under headings corresponding to the paragraph numbering of the Office Action. Claims 23 and 32 have been amended to include the word "predetermined". A marked up copy of the amended claims are included herein under the heading Marked-Up Copy of the Amended Claims. No new matter has been added.

(2)

Claims 23, 25, 26, 29, 30, 32, 34, and 35 were rejected under 35 USC 102(e) as being anticipated by Yan (5,843,172). The Final Office Action points to FIG. 2 of Yan wherein two different pores that are longitudinally spaced from one another are different in size. The Final Office Action asserts that Yan discloses a tube having at least two different longitudinally spaced regions of different physical characteristics. Applicant respectfully disagrees. Nonetheless, Applicant has amended claim 23 and 32 without prejudice or disclaimer to recite different longitudinally spaced regions of different *predetermined* physical characteristics.

Yan does not have different longitudinally spaced regions of different predetermined physical characteristics. Rather Yan has mere variation in pore size. In FIG. 2, Yan is illustrating a partial microscopic view of a porous sintered wire with several porous cavities 18. Column 4, lines 54-65 of Yan states that pore size is a function of particle size and dimension and that the size of the pore 18, particularly with generally spherical particles, is proportional to particle size. Yan then states the importance of consistent pore size to ensure that drugs are evenly distributed throughout the stent length. Note that FIG. 2 of Yan utilizes generally spherical particles of similar size in the sintered tube (which produce the most consistent pore sizes). Thus, in FIG. 2 Yan is showing the natural variance of the consistent pore size throughout the stent; this consistent pore size being of importance in ensuring that drugs are evenly distributed throughout the stent.

Yan is not showing different longitudinally spaced regions of different predetermined physical characteristics as is recited in the instant claims. Yan teaches the importance of consistency throughout the length of the stent. There are no regions of different pore sizes or regions of different predetermined physical characteristics in FIG. 2 of Yan. There

is only the variance found in sintered materials. For this reason Yan does not anticipate. Applicant respectfully requests that the 102(e) rejection be withdrawn.

(4)

Claims 23, 24, 27-30, 32, 33, and 36-40 were rejected under 35 USC 103(a) as being unpatentable over Richter in view of Saunders (5,780,807). The Final Office Action states that Richter discloses all the features of the instant claims except subsequently cutting the stent from a tube. The Office Action further states that because Saunders'807 discloses cutting a stent from a tube that the instant claims are obvious in light of Saunders. Applicant respectfully disagrees.

Even if the proposed combination were made, the combination would not disclose all of the elements of the instant claims. Specifically, independent claims 23 and 32 recite providing a tube having at least two different longitudinally spaced regions of different predetermined physical characteristics and subsequently cutting a stent from the tube. The Final Office Action uses Saunders '807 merely to show that cutting a stent from a tube is known in the art. However, with these references the Office Action neglects addressing the inventiveness of cutting a stent from a tube which has previously been manufactured such that the tube has at least two different longitudinally spaced regions of different predetermined physical characteristics prior to being cut. This inventive feature must be taught or suggested to show obviousness.

The Richter disclosure allows for several ways of manufacturing the Richter stent. One method involves different heat treatments for different portions of the stent. Another method involves the use of different materials. As to the first method, the specification does not state that the heat treatment occurs prior to cutting. Furthermore, Richter does not teach the cutting of a tube. Rather, Richter teaches the cutting of a sheet.

One of ordinary skill in the art would expect that the Richter stent would be differently heat treated subsequent to the pattern being cut in the sheet rather than prior to the pattern being cut. Thus, the sheet itself would not have different properties until after the cutting and heat treatment. Where different materials are provided, there is no teaching in the combination of references that the different materials of Richter should be combined into a tube and subsequent to that, the tube cut. The sections of different material could well be attached to

the remainder of the stent subsequent to cutting the tube.

As such, the proposed combination does not render obvious the instant claims and withdrawal of the rejection is requested.

(5)

In the Office Action, claims 27, 28, and 36-39 were rejected under 35 U.S.C. 103(a) as being unpatentable over Yan in view of Gray et al. Gray is relied upon to teach the use of serpentine segments extending about the circumference of the stent.

Claims 27, 28, and 36-39 are patentable over the combination of Yan and Gray for the same reasons that the independent claims from which they depend are patentable over Yan as discussed in paragraph 2 above. Gray does not provide the missing teaching of a tube which has at least two different longitudinally spaced regions of different predetermined physical characteristics.

Given the failure of the proposed combination to disclose all of the elements of the instant claims, withdrawal of the rejection is requested.

CONCLUSION

In view of the foregoing it is believed that the present application, with pending claims 23-30 and 32-40, is in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,

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Marked-Up Copy of the Amended Claims

23. (Thrice amended) A method of manufacturing a stent comprising the steps of:
providing a tube, the tube characterized by a longitudinal axis, having at least two different longitudinally spaced regions of different predetermined physical characteristics, and subsequently cutting a stent from the tube.

32. (Thrice amended) A method of manufacturing a stent comprising the steps of:
providing a tube having at least two different longitudinally spaced regions of different predetermined physical characteristics; and subsequently, cutting a plurality of openings in the tube to form a stent.